

INSIDE *ALEC*

April 2007

A Publication of the American Legislative Exchange Council

PANDEMIC!

Prepare for the Worst

**April in Paris:
UN Climate Report
No Cause for Concern**

**What Price,
Government?
Michigan's Financial
Crisis**

**One Giant Leap for School
Choice: Victory in Utah**

One Giant Leap for School Choice: Victory in Utah

By Matt Warner

School choice history was made February 12, when Utah Gov. Jon Huntsman Jr. signed the *Parent Choice in Education Act* making the state the first in the United States to boast universal eligibility for public-school students to receive tuition scholarships for private schools. Although scholarship amounts range from \$500 to \$3,000, according to parental income, all public-school parents and even some private-school parents (with low incomes) can apply. According to a report in *Education Week*, some three percent of the school-age population in Utah, or about 15,000 students, is enrolled in about 100 private schools, with an average tuition of about \$3,800 per year. The report also cites a 2004 Utah State University study that shows existing private schools can absorb about 6,000 more students. Utah's new scholarship program's initial budget is \$9 million for 2007-08 suggesting no more than about 3,000 students would likely receive scholarships that year, but that budget amount is expected to climb in subsequent years.

Although Utah's move is visionary, it still has its detractors who question the constitutionality of the program and worry about its effect on public-school funding. However, Utah already administers a similar program that has not met legal challenge. The Carson Smith Special Needs Scholarship program, enacted in 2005, provides publicly funded scholarships to students with disabilities to attend private schools. A wider selection of service providers means parents of those students have

Continued on page 16



2007 ALEC National Chair, Iowa Representative Dolores Mertz, is also the Chair of her state's Agriculture Committee.

INSIDE ALEC

April 2007

A Publication of the American
Legislative Exchange Council

2007 National Chair

Iowa State Representative Dolores Mertz

Private Enterprise Board Chairman

Jerry Watson

American Bail Coalition

Executive Director

Lori Roman

Senior Director of Policy and Strategic Initiatives

Michael Bowman

Senior Director of Membership and Meetings

Megan Lott

Director of Public Affairs

Jorge Amselle

ALEC Exhibits & Advertising

Exhibiting or advertising at an ALEC event is a great way to promote your company to members of both the private and public sector. If you are interested in exhibiting or advertising at an ALEC meeting, please contact Rob Pallace at 202-466-3800 or email him at exhibits@alec.org.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
ALEC

© American Legislative Exchange Council
1129 20th Street, N.W., Suite 500
Washington, D.C. 20036
(202) 466-3800 • www.alec.org

ALEC 2007 Calendar

January 31	Disorder in the Court Issue Briefing	Missouri
February 9	Disorder in the Court Issue Briefing	Georgia
March 1	Membership Event	Topeka, KS
March 5	Membership Event	Little Rock, AR
March 7	Membership Event	Helena, MT
March 19	Membership Event	Lincoln, NE
March 19	Membership Event	Annapolis, MD
April 10	Membership Event	Jefferson City, MO
April 26-29	Spring Task Force Summit	Hilton Head, SC
July 25-29	34th Annual Meeting	Philadelphia, PA
December 5-8	States & Nation Policy Summit	Washington, DC

PANDEMIC!

Feds and Private Sector Help States Prepare

Asian bird flu seems to be the current health catastrophe facing disaster prevention specialists, but it is far from the only one, and state governments have good reason to take heed and be well prepared.

Influenza pandemics have occurred three times in the past century. There is a good possibility, as history and science show, the United States and the world will face at least one pandemic this century.

Pandemics can occur when a new strain of flu appears to which people have no immunity, and the disease spreads rapidly around the world.

The U.S. Department of Health and Human Services (HHS) and its Centers for Disease Control and Prevention (CDC) are actively working in collaboration with other federal agencies and public-health and private partners to help states and localities prepare for a major pandemic outbreak.

The CDC recently released new community planning strategies—Community Strategy for Pandemic Influenza Mitigation, available at www.pandemicflu.gov/plan/states/index.html—that state and local community decision-makers need to consider based on the severity of an influenza pandemic. Those strategies are important because the best protection against pandemic influenza, a vaccine, may not be available at the outset of a pandemic or present in sufficient quantities. Community strategies that delay or reduce the impact of a pandemic may help reduce the spread of a disease until vaccine supplies become available.

“The threat of a pandemic continues to be real,” said HHS Secretary Mike Leavitt in an HHS press release. “We need to continue helping state and local decision makers determine some of the specific actions they could take during the course of a pandemic to reduce illness and save lives.”

“An important consideration for action is the severity of a pandemic once it emerges,” Leavitt added. “The new CDC guidelines are a step forward in that direction.”

CDC’s new guidelines help authorities determine the most appropriate actions to take and incorporate a new pandemic influenza planning tool for states, communities, businesses, schools and others. The Pandemic Severity Index (PSI) takes into account the fact that the amount of harm caused by pandemics can vary greatly, with that variability having an impact on recommended public health, school and business actions.

Is your state prepared for a PANDEMIC?

“The reality is, when it comes to a pandemic, we’re overdue and underprepared,” Leavitt told about 200 state, city and county leaders during the summit. “Anything you say before it happens seems like we’re being alarmist. At the same time, anything you do after the fact seems inadequate.”
— Idaho Pandemic Flu Summit, 3/16

US signs deal to stockpile anti-bird-flu drug
“Helping states develop their own medical stockpiles will facilitate quicker distribution of antiviral drugs in the event of a pandemic influenza outbreak,” said U.S. HHS Secretary Mike Leavitt.
— San Francisco Chronicle, 7/1/06

“Any state, any community, or for that matter any citizen that failed to prepare, assuming the federal government will take care of them in a pandemic, they’re wrong,” Secretary Leavitt said.
— Minnesota Veterinary Center, St. Paul

For more information, please visit www.statepandemictoolkit.com



PANDEMIC!

Continued from page 3

The PSI, which is modeled after the approach used to classify hurricanes, has five different categories of pandemics, with a Category 1 representing moderate severity and a Category 5 being the most severe. The severity of a pandemic is primarily determined by its death rate, or the percentage of infected people who die. A Category 1 pandemic is as harmful as a severe influenza season, whereas a pandemic with the same intensity of the 1918 flu pandemic, which killed 20 to 50 million people worldwide, would be classified as Category 5.

“It’s important that we try in advance to imagine and evaluate some of the steps that could be taken to slow the spread of pandemic influenza in communities,” said Dr. Julie Gerberding, CDC director in an HHS press release. “That requires a great deal of forethought, vision, and collaboration.”

Gerderding said she is proud of CDC’s efforts in developing the severity index and subsequently linking it to specific actions.

“We recognize that much work remains, but this new approach should help communities, schools, businesses, and others strengthen their pandemic influenza plans,” Gerberding said.

Based on the projected severity of the pandemic, government and health officials may recommend different actions communities can take in order to limit the spread of disease. Those actions, which are designed primarily to reduce contact between people, may include:

- Asking ill persons to remain at home or not go to work until they are no longer contagious (seven to 10 days). Ill persons will be treated with antiviral medication if drugs are available and effective against the pandemic strain.
- Asking household members of ill persons to stay at home for seven days.

- Dismissing students from schools and closing child-care programs for up to three months for the most severe pandemics, and reducing contact among children and teenagers in the community.
- Recommending social distancing of adults in the community and at work, which may include closing large public gatherings, changing workplace environments and shifting work schedules without disrupting essential services.

Those measures will be most effective if they are implemented early and uniformly across communities.

Given the severe risks of illness, death, and disruption throughout the country and around the world a pandemic could cause, the American Legislative Exchange Council has approved a model resolution, the *Resolution on Pandemic Flu Preparedness*, which urges states to adopt additional policies to better prepare for a pandemic outbreak.

In conjunction with this model resolution, Roche Pharmaceuticals, the maker of TAMIFLU—the only prescription antiviral pill indicated to prevent and treat type A and type B influenza—has unveiled a new Web site, www.statepandemictoolkit.com, specifically aimed at helping states meet this vital challenge and better prepare for its eventuality.

Roche has also increased its global production capability of TAMIFLU to 400 million treatments annually, an increase of 100 million. States now have the option to purchase antiviral drugs through U.S. Department of Health and Human Services negotiated contracts. Because everyone is at risk of morbidity and possibly mortality during an influenza pandemic, Roche encourages state health agencies to have a ready supply of antiviral drugs available for timely distribution to pre-identified groups.

The CDC’s Interim Pre-pandemic Planning Guidance is available at www.pandemicflu.gov.

ALEC Policy Forum

Check out our new format for ALEC Policy Forum articles. Each of the two articles on the following pages is designed to be easily separated from the rest of the magazine and archived or distributed as a stand alone document.

What Price, Government?

Michigan's Financial Crisis: A Case Study

By Brian Balfour and Michael LaFaive

Throughout the 20th century, Michigan has been associated with manufacturing. Look up Michigan in an encyclopedia or school textbook and you will likely read about industrial giants, assembly lines, unions and mass production. But an employment shift in 2006 may signal that Michigan in the 21st century will be known as the government state.

The recent announcement that Pfizer would shed 2,400 jobs by 2008 has dominated headlines across the state, as have employment losses elsewhere in Michigan. According to the U.S. Bureau of Labor Statistics (BLS), Michigan currently has the second-highest unemployment rate in the nation, at 7.1 percent.

Meanwhile, government employment is going up. According to the BLS, total government employment in Michigan, which includes federal, state, local, higher education, and public primary and secondary schools, is up 3.9 percent over the last decade. Non-farm employment is down 1.7 percent during the same period (both figures are seasonally adjusted).

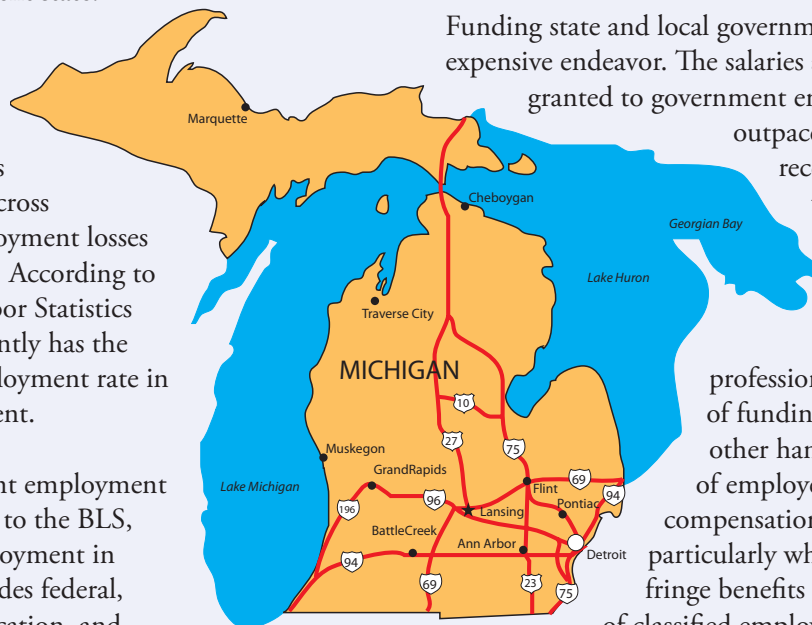
More importantly, Michigan has crossed an employment Rubicon of sorts. The BLS shows that 2006 was the first full year that total government employment in Michigan exceeded the number of manufacturing employees (this BLS data set goes back to 1956 and also is seasonally adjusted). Michiganders working for the automobile and other manufacturing industries are now outnumbered by government workers supported by taxpayers.

Michigan reached this dubious milestone even though the number of full-time, state civil servants is down slightly in recent years; it is about 52,400, according to the Michigan Civil Service Department, having fallen 2.5 percent depending on how one calculates the change from January 2003 through December 2006.

Funding state and local government institutions is an expensive endeavor. The salaries and fringe benefits granted to government employees often greatly outpace the compensation received by those taxpayers who foot the bills of government. Maybe the state has a higher concentration of professionals that raises the cost of funding government. On the other hand, the composition of employees may not explain compensation differences, particularly when you consider the fringe benefits enjoyed by every level of classified employee.

According to data from the Michigan Department of Labor and Economic Growth, the average private sector employee in Michigan earned \$41,128 in fiscal 2005, compared to \$48,421 for the average state civil service worker. State government employees, in other words, earned about 18 percent more than private sector workers. Fiscal 2006 numbers have not yet been released, so it remains to be seen if the gap widened or narrowed.

The difference in compensation becomes even more pronounced when you factor in the value of fringe benefits. In fiscal 2005, classified, Michigan state

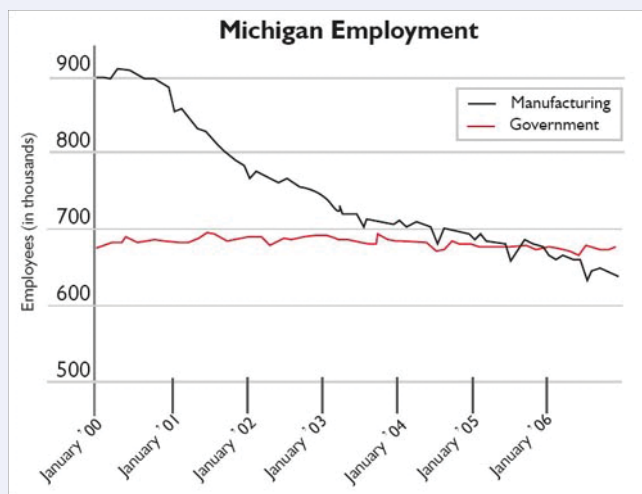


employees' benefits averaged almost 54 percent of base payroll, whereas in the private sector, nationwide benefits averaged almost 41 percent of base payroll (Michigan-specific, private-sector statistics were unavailable). These compensation calculations include employer contributions to the Federal Insurance Contributions Act (FICA), unemployment insurance, and workers' compensation insurance.

The average Michigan state employee receives a salary and benefits package worth nearly \$75,000. If Michigan private-sector employees received the national average for fringe benefit compensation, their total "pay" would be \$58,000. It is possible that those private employees may enjoy higher fringe benefits than the average; however, in order to equal the average total compensation of state employees, the value of their fringe benefit package would need to be 82.5 percent of their base payroll, which is more than twice the national average.

It should be noted those figures do not include compensation for scores of non-civil servants, including the governor, legislators, judges and their respective staffs, many of whom have compensation packages even more generous than classified state employees.

According to the "Michigan House of Representatives



Source: Bureau of Labor and Statistics
(Government employment includes workers employed by federal, state, local, higher education, public primary and secondary schools in Michigan.)

Guidelines and Policies" chart of benefits, House staffers earn one vacation day for every 10 days they work (26 days total per year), on top of 12 official holidays. They also receive two bonus days for every five years of service. In other words, a five-year veteran of the House gets two months paid leave annually. State classified employees receive 13 official holidays in even-numbered years because Election Day is an official holiday, ostensibly to make it easier for them to vote.

Some might say comparing overall private-sector pay with that of state government is unfair because state employees generally do higher-end work. That's why it's important to look at pay for comparable jobs in the two sectors—whereupon one discovers that the disparity can be even more pronounced.

We telephoned several private employers in an attempt to make closer job comparisons. Below were some of our findings:

- The pay and fringe benefits received by a communications assistant (sometimes titled "receptionist") in the state public sector is valued between \$42,200 and \$59,700 a year. By contrast, the Lansing Chamber of Commerce would pay salary and fringe benefits worth about \$30,200 to \$34,400 for equivalent work in a year. That same receptionist would be allowed up to 12 sick days annually and would pay 50 percent of prescription drug costs out of pocket. The Chamber does make modest matching contributions to its employees' 401(k) plans, but those numbers are not part of the above totals.
- The Lansing Chamber informs the Center that its staff average six sick-days per year. By contrast, in fiscal 2005 the average full-time, classified state employee could qualify for about 12.5 sick days annually. Lastly, a state employee might pay between \$7 and \$30 out-of-pocket for prescriptions.
- In the mid-range of salaries, the state pays total compensation of approximately \$48,800 to \$97,300 (these figures include value of fringe

Continued on page 11

April in Paris: Recent UN Climate Report is No Cause for Concern

By Daniel Simmons

Climate change has recently been in the news following a report by the United Nation's Intergovernmental Panel on Climate Change (IPCC). Its most recent report, *Climate Change 2007: Summary for Policymakers*, is available at <http://www.ipcc.ch/activity/wg1outlines.pdf>. In the run-up to the report's release, there were a large number of stories claiming that climate change would cause environmental doom. But in the end, the report itself was much tamer than environmental activists had hoped.

The report's authors believe mankind is causing much of the warming we have seen, but at the same time, it backs away from a number of important claims from previous reports.

The biggest news in the report is the claim that much of the warming the earth has experienced over the past 50 years was "very likely" caused by humankind. That claim is nothing new, but the report's authors stressed in their "expert judgment" they were more confident than before.

The curious reader would want to know why the report's authors felt

this way, notably because of the footnote at the end of the sentence that "supports" the claim about mankind's influence on climate. Usually a footnote is included to substantiate a claim with facts, reports, etc., but not in this case. In the IPCC's report, the footnote is completely unhelpful. The footnote states, "Consideration of remaining uncertainty is based on current methodologies," whatever that means. Unsurprisingly, the entire report does not cite science to support its assertions. That is because the entire report is nothing more than a summary.

Standard practice for a scientific report is to start with a summary of all the information it contains. In this case, the IPCC just released the summary with no supporting information. The scientific reports will be released in a couple months, which seems like a strange way to do science.

There are, however, a couple important things to note in the report. Although the media reported the IPCC's claim of being more certain of human influence on the climate, they failed to report that the IPCC had revised key climate

change projections *downward*. In the report, the IPCC estimated that temperatures will rise between 1.2 and 3.7 degrees Celsius over the next century. This is down from its estimate five years ago when it claimed temperatures would increase between 1.4 and 5.8 degrees Celsius.

The IPCC also lowered its estimate of rising sea levels by one third. It now estimates that sea levels will rise by between 7 and 23 inches over the next century, much lower than the previous estimates and far lower than the popular horror stories of sea levels rising 10 to 20 feet.

It is also important to note the IPCC report does not rely on the so-called “temperature hockey stick.” In the last summary report, the IPCC used a graphic that showed temperature over time. The graphic was persuasive because it showed temperature remaining pretty level for a long period of time (the shaft of the hockey stick) and then shooting up in recent years (the hockey stick’s blade). In the previous report, the hockey stick was featured prominently multiple times because it purported to show that the recent warming was exceptional and unprecedented in history. The problem is that the statistical analysis that generated the hockey stick temperature graph was seriously flawed. The most recent report does not rely on the hockey stick to claim that humans are causing climate change.

In sum, the IPCC’s Summary for Policymakers breaks no new ground. Most people acknowledge that most of the earth has warmed over the past 100 years (although temperatures in Antarctica have not risen). Most climate scientists think that humans have played some role in the warming. The real question is not whether the earth is warming. After all, during the mid-1800’s we were in the Little Ice Age, so it should come as no surprise that the earth has warmed since. The real question is, what is mankind’s influence on climate and what should be we do about a changing climate. Even if humans are playing no role whatsoever, the climate is changing and we should all be prepared.

Here are some things we need to consider with climate-change policies:

1. The climate is changing. It always has and it always will. The climate changed before humans arrived and it will continue to change after we are gone.
2. Not all change is bad. Just because change is occurring doesn’t mean that the results will be bad. Some changes will be harmful, but some will be beneficial.
3. Just because the climate is changing doesn’t mean that humans are the cause.
4. How much, if any, of the warming has been caused by human activities?
5. Will the policies meant to impact climate change have any climate benefits or will they merely cause economic harm? For example, the Kyoto Protocol, which caps carbon dioxide at about 5 percent below 1990 levels will only reduce temperatures by a few hundredths of a degree Celsius, but will cost billions of dollars. How does this make any sense?

So what should we do? What is the best way to adapt to a changing climate? In America, the answer is simple—free markets. Government programs may be attractive to some, but they cannot adjust to changing conditions like market-driven decisions can. Worse, when government programs are built on faulty principles, as can easily be the case with climate change measures, they will be doubly inefficient by having the wrong goal, then being inefficient at achieving that goal. The best way Americans can adapt to any changes brought about by climate change is to have a robust, free economy.

Further concern about climate change is based on its possible impact on people in Third World countries.

Ron Bailey, science correspondent for *Reason Magazine*, wrote that a good way “to implement a no-regrets climate change...strategy” is giving people freedom in the marketplace:

“The best way to do it is the old-fashioned way by encouraging economic growth and free trade to alleviate poverty, illiteracy, maternal and infant mortality, and so forth. For example, people living in the developing countries that have participated in the current wave of globalization by being more open to free markets and trade have been becoming richer. World Bank economist David Dollar has pointed out, ‘Between 1993 and 1998, the number of absolute poor in the globalizing developing countries declined by an estimated 120 million, while poverty increased in the rest of the developing world by 20 million.’ Indeed, Dollar adds, ‘China has seen the most dramatic poverty reduction in history.’”

Wealth makes people in the first world and the Third World better able to respond to changing conditions—climate or otherwise. America can

adapt to radical changes because we have a vibrant economy. That does not mean that change won’t be painful for some; it means that overall markets give us the most flexibility to adjust and react to change and in the end we will all be better off.

We should be free to choose the fuels and energy sources that fit our needs. A richer world is a safer, more comfortable world. For many, climate-change policies will just make them poorer without helping the environment in any meaningful way.

Daniel Simmons is the Director of the Natural Resources Task Force at ALEC.



Copyright © 2007 by the American Legislative Exchange Council. All Rights Reserved. Except as permitted under the United States Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system without the prior permission of the publisher.

Published by
American Legislative Exchange Council
1129 20th Street, N.W., Suite 500
Washington, DC 20036

Consumer-Directed Medicaid Reform

Christie Raniszewski Herrera, Director of the Health and Human Services Task Force at ALEC, testified before Kansas House and Senate legislative committees in Topeka, February 7, about the need for Medicaid reform. In 2005, Kansas Medicaid spending totaled \$1.9 billion, all spent in an outdated system that limits consumer choice, leads to increased use of emergency rooms, and encourages waste and abuse. A consumer-directed Medicaid system would provide patients with a choice of several plans tailored to meet their needs, focus on preventative care, improve quality of care and efficiency, and provide long-term financial stability.

“Ms. Herrera’s testimony was of great value to our committee as we work to address the issues of Medicaid and providing the best quality of service to our citizens,” said Kansas Rep. Jeff Colyer, a medical doctor who sits on the legislature’s Health and Human Services Committee as well as the Joint Committee on Health Policy Oversight.

Congress Changes Gears on Telecom and IT

Although many states have introduced legislation this year on cable video franchising reform, security breach notification, telecom deregulation, and cell phone safety, Congress seems to be changing gears in terms of all-encompassing telecommunications legislation. With the change in majority, the general assessment is that there will most likely not be a repeat of massive, multi-facet bills but instead smaller issue specific legislation. Bills have already been introduced focusing on pre-texting, tax moratoriums, and net neutrality. ALEC continues to monitor these bills and their potential effects on the states.

Matthew Hussey, Director of the Telecommunications and Information Technology Task Force for ALEC, will participate in a panel discussion about state and local activities at the Broadband Policy Summit, held this June in Washington, D.C. For more information visit: www.broadbandpolicysummit.com.

ALEC Policy Corner: Stopping Asbestos Lawsuit Abuse

On January 30, ALEC Civil Justice Task Force Advisor, Mark Behrens of Shook, Hardy & Bacon, LLP, testified at an informal hearing before the Missouri House Judiciary Committee on HB 512, the Asbestos and Silica Claims Priorities Act. This legislation, co-sponsored by Representatives Bryan Pratt and Brian Yates, is based on an ALEC model bill of the same name.

The legislation will ensure that the truly ill victims of asbestos exposure receive priority care in the court system. Up to 90 percent of asbestos claims are brought by claimants who have been exposed to asbestos at one point in their lives, but have yet to show any adverse affects from their exposure. Many of these individuals would never even know that they had visible asbestos-related markings on their lungs had they not undergone a screening paid for by the attorneys that would later represent them (often these screening are done in trailers set up at work sites to provide for mass screenings and mass plaintiffs). In addition, because of state statutes of limitation, many feel pressured to file immediately out of fear that the window of time in which they can file will close.

To further complicate matters, there has been a recent surge in filings from plaintiffs claiming disability caused by exposure to silica. Silica is industrial sand that when ground into tiny particles and inhaled can cause the lung disease, silicosis. Though the number of deaths from silicosis has been steadily declining over the years, the number of lawsuits claiming silicosis has dramatically increased. Silicosis claim filings have been found to be wrought with fraud.

In one egregious example, U.S. District Court Judge Janis Graham Jack, a former nurse, dismissed all but a handful of the 10,000 silica claims before her when she noticed that while fewer than 200 people die from the disease each year, thousands of silicosis lawsuits were being filed in her court. Judge Jack discovered that of the cases before her, 65 percent had previously been claimants in an asbestos suit. That proved to be a vital

Continued on page 15

Michigan

Continued from page 6

benefits) to food service supervisors at state facilities. By contrast, a Canteen Food Services' equivalent job would pay total compensation (including fringe benefits equal to 35 percent of payroll) of between \$54,000 and \$67,500.

- Corrections officers also provide for a good, mid-range comparison. According to the state, the pay range for a state corrections officer (level 8) runs between \$14.35 an hour and \$21.06 an hour or between \$27,500 and \$40,400 annually, plus fringe benefits, vacation and a sick package that add up to about 54 percent of base payroll. Once hired, the officer would collect this compensation even during his or her two-month training period.
- By contrast, private corrections officers hired into Michigan's [now closed] youth correctional facility in Baldwin could expect a training wage of \$9 an hour, which would be raised to \$14.48 an hour upon completion of their training—a competitive entry-level wage. Frank Elo, former warden of the private facility, also has 30 years of state corrections experience in Michigan. He notes that the overall compensation for public and private corrections officers differs sharply outside of the wage scale.

For instance, state corrections officers get a 5 percent pay premium for working the afternoon or night shift while the GEO Group, Inc., the firm the state hired to run the Baldwin facility, paid the same regardless of shift, according to Elo. A GEO officer would earn four hours of sick leave for every month of work, which is half the state rate. He would also get 10 paid holidays versus the 12 (sometimes 13) provided by the state. After working for GEO for a year, officers would earn two weeks of vacation. The state grants vacation days to its employees immediately.

One of the biggest differences in benefits is in employee health care benefits. The GEO Group split the cost of providing health insurance with employees who chose to add dependents to his or her insurance plan. In

other words, if an employee has a family and the cost of GEO insurance is \$700 a month, the employee must pay \$350 of that amount. By contrast, a state employee with a family of four on the state health plan might pay less than \$63 per month in premiums whereas the state paid more than \$1,100 for his or her coverage.

- At the upper level of pay scales are such professionals as physicians. The state lists a salary range starting at \$46 an hour to \$70 an hour. A non-managerial, state-classified, full-time physician can make between \$95,680 and \$156,000 a year. In order to get a competitive range of salaries for equal positions in the private sector, the Mackinac Center consulted with a large medical services company that hires doctors, nurses and other medical professionals in Michigan and elsewhere in the nation. The company reported that it hires contract physicians for between \$85 an hour to \$90 an hour (\$156,000 to \$165,000 annually). Thus, a private-sector physician's base salary appears to be a bit higher, but public-sector physicians enjoy two advantages. First, if the company's physicians don't work they don't get paid. Second, the company's contract physicians receive no benefits unlike state employees.

When the firm does employ doctors full time in management positions, total benefits (including FICA, unemployment insurance and workers' compensation) do not exceed 19 percent of base payroll. Because of the desire to remain competitive with other firms, the company asked the Mackinac Center not to divulge its name.

Why is it so easy for state governments to pay wages and benefits that greatly exceed the private sector? Because they can. When private companies face financial trouble, they may go out of business. Government has another option: it can reach deeper into taxpayers' pockets.

Writing for the Mackinac Center in 1995, former Michigan State Rep. Margaret O'Conner cited a

ALEC POLICY FORUM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

1994 report from the American Legislative Exchange Council that offered this insight: "Private companies do not have the freedom to artificially raise employee compensation.... A company that raises employee compensation above levels that customers are willing to pay (in the price for the goods they buy) will lose market share and eventually close.... Government, unlike private employers, can artificially inflate public employee compensation, and compel the taxpayers to pay."

Further increasing the cost of employing state civil service workers is the fact that a relatively high percentage of state employees are unionized. Union bargaining has driven state compensation up over the years. Moreover, one benefit not addressed is job security. It is difficult to remove employees from government payroll and often requires generous financial buyouts to induce early retirements.

As Michigan officials work to balance the state budget, they must look to further reductions in state spending. One reform that promises savings is competitive contracting. Instead of hiring employees to do every task, the state could contract for work with existing private sector companies. Done well, competitive contracting saves money and improves services. Further cost-saving measures have already been addressed in detail.

Brian Balfour is a policy analyst for the Charles G. Koch Charitable Foundation in Washington, D.C.

Michael LaFaive is director of the Morey Fiscal Policy Initiative with the Mackinac Center for Public Policy, a research and educational institute headquartered in Midland, MI.



Copyright © 2007 by the American Legislative Exchange Council. All Rights Reserved. Except as permitted under the United States Copyright Act of 1976, no part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, without the prior permission of the publisher.

Published by
American Legislative Exchange Council
1129 20th Street, N.W., Suite 500
Washington, DC 20036

Mandating Health Benefits

Retail Industry Leaders Association Stops “Fair Share” in Maryland

On January 17, the United States Court of Appeals for the Fourth Circuit ruled in favor of ALEC Member, the Retail Industry Leaders Association (RILA), and against the state of Maryland, finding that the state’s law requiring large employers to provide health benefits to its employees was preempted by federal law.

The Maryland Law required private employers with more than 10,000 employees to spend eight percent of their payrolls on health care benefits. In actuality, four companies in Maryland fit within this criteria, but through a series of carve-outs, Northrop-Grumman, Johns Hopkins University, and Giant Food all received special exemptions, leaving Wal-Mart the only company affected by the law. The appeals court upheld a lower court ruling that Maryland’s law was preempted by the Employee Retirement Income Security Act (ERISA), a federal labor law that enables companies to offer uniform health benefits across the country rather than have to deal with a variety of state requirements.

“Today’s appeals court decision makes clear that employer health plans are governed by federal law, not a patchwork of state and local laws,” said RILA President Sandy Kennedy. “The court’s decision sends a strong message that similar bills under consideration in other states and municipalities also would be preempted by ERISA.”

Indeed, this decision has sent a message to other states, including Indiana, Minnesota, Missouri, Mississippi, and New York, which have all filed similar so-called “Fair Share” bills for the 2007 session. New Jersey alone has five “Fair Share” carryover bills pending for the 2006-07 session.

As a result of this decision, anti-corporate interests have seen the writing on the walls and are moving away from supporting similar “Fair Share” bills in favor of bills promoting onerous reporting requirements. Those interests have failed to understand the implications of the ERISA preemption as they attempt to move language that calls for companies of a certain size to identify the private health care practices of its employees, or language forcing employees themselves to identify their employer when using health care services, thereby creating yet another patchwork of state and local requirements for employer health benefit distribution in direct violation of the same federal statutes.

“Congress enacted ERISA, in part, to create uniformity in

national health benefit plans,” said Stephen Cannon, outside General Counsel to RILA. “Differing state and local health benefit mandates would only increase health care costs and serve as a strong disincentive for employers to offer health coverage.”

In its opinion, written by Judge Paul V. Niemeyer and joined by Judge William B. Traxler, Jr., the Fourth Circuit recognized that had it not affirmed the district court’s decision, “surely other states and local governments would follow” Maryland in passing laws that “clash with ERISA’s preemption provision and ERISA’s purpose.”

Specifically, Judge Niemeyer stated, “Because Maryland’s Fair Share Health Care Fund Act effectively requires employers in Maryland covered by the Act to restructure their employee health insurance plans, it conflicts with ERISA’s goal of permitting uniform nationwide administration of these plans. We conclude therefore that the Maryland Act is preempted by ERISA and accordingly affirm.”

The Fourth Circuit also noted the decision prevents the very type of “regulatory balkanization that Congress sought to avoid by enacting ERISA’s preemption provision.”

Judge M. Blane Michael was the lone dissent.

The Retail Industry Leaders Association continues to work with state legislators across the country to explain the retailers want to, and in fact do, provide competitive health care benefits to their employees.

The American Legislative Exchange Council wants legislators to understand that supposed “Fair Share” bills ignore the most pressing problem in the health care system today: ever growing health care costs.

Simply forcing employers to pay a specific amount for health care does nothing to reduce those costs. Furthermore, these types of bills do nothing to address the needs of the uninsured and provide no assurance that a single uninsured resident will gain coverage. The end result of this type of flawed legislation is that employees could end up footing the bill for these newly mandated benefits. Many of these employees will be forced to confront the bitter irony that legislation designed to provide employer-based health care leaves them with neither an employer nor health care.

There are some encouraging health care reform efforts underway in the states that incorporate all components of our society in the health care solution, not just corporations. The move to insure more Americans will clearly help in cutting costs and ALEC stands ready with its private sector members like RILA to encourage the debate across the country and bring to the forefront the central health care issue facing our nation: skyrocketing health care costs.

More Channels and Lower Prices

What's Not to Like?

By Matthew Hussey

More choices and lower prices with your cable TV service. Sound like a dream? It doesn't have to be. A number of states, including Georgia, Missouri, Iowa, Utah, and Wisconsin are continuing the trend from last year by considering legislation that would reform the existing local cable video franchising process. Such legislation streamlines the system by migrating authority from the numerous municipalities to one entity, the state.

The current and archaic framework of municipal cable franchising is inadequate for today's market and, in fact, impedes future growth in this sector. Cable franchising legislation would bring much needed competition, consumer choice, and lower prices to the cable market. It would also reduce the size of government by standardizing a patchwork of local regulatory regimes into one state authority, thereby removing needless bureaucracy.

The current local franchise model deters competition from the market because cable video providers have to separately negotiate contracts with numerous, sometimes hundreds of municipalities in a state. Just imagine if you had to go to every county and apply for a driver's license instead of just a state DMV. To further complicate the process, each franchise agreement can take anywhere from a month to more than a year to be approved, depending on the municipality.

Statewide franchising consolidates the process by allowing companies to deal with the state instead of multiple local governments. As a result, competing cable video providers are able to enter markets more quickly.

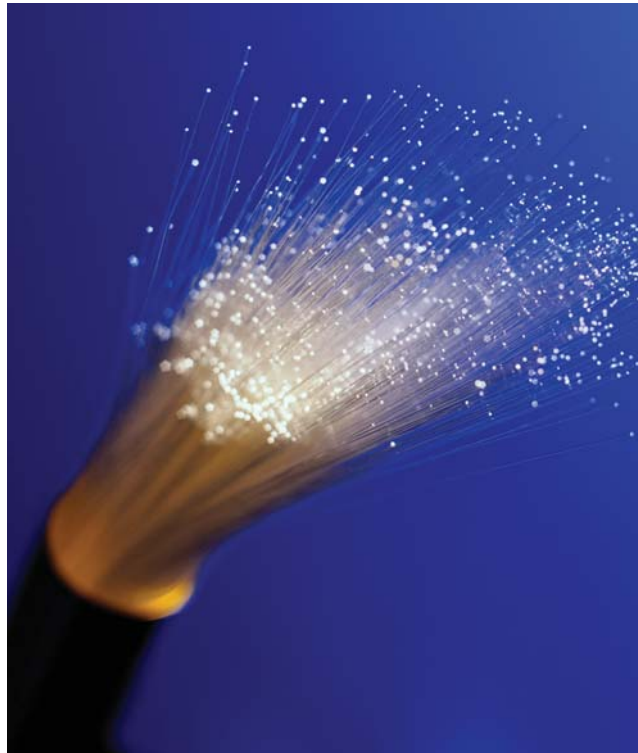
History has consistently shown that increased competition brings more choices to consumers by

spurring innovation, offering new services, and improving customer service, and most importantly, lowering prices. The Federal Communications Commission (FCC) has reported that rates in markets where wireline cable competition exists are 15 percent lower than areas with no competition. That means an approximate savings of \$100 a year per household. It is estimated that the lack of competition is costing consumers a total of \$9 billion a year nationwide.

Another current roadblock is the different requirements and restrictions that exist from one municipality to the next. Some local

governments have even made demands of new applicants wholly unrelated to cable service or not required by the existing cable video provider. A statewide video franchise would standardize this unneeded and potentially unfair practice.

Eight states have successfully enacted statewide franchising reform: Texas, Indiana, Kansas, North Carolina, South Carolina, New Jersey, California, and



Michigan. The Virginia and Arizona state legislatures have enacted reform by standardizing local authority processes, fees, etc., which has brought fractional relief. Oklahoma's Attorney General and the Connecticut Department of Public Utility Control (PUC) have also issued opinions on franchising for their states. Those states have already seen positive results from those laws and activities.

Texas has granted more than 30 new statewide franchise agreements to companies offering cable video services. One of them, Verizon, has deployed its FiOS TV and Internet service in more than 20 Texas communities reaching nearly 400,000 homes. New entrants have caused a 20 percent decrease in cable prices in just one year alone. New Jersey also saw similar results, when Verizon announced its plan to invest \$1.5 billion over the next three years to build-out its FiOS network in that state. The company expects it to be available to 3.5 million residents by the end of 2008.

In Indiana, AT&T announced plans to invest \$250 million over the next three years to deliver next-generation video & broadband services. The company cited the state's new franchising law as the reason for this investment. For Michigan, the most recent state to enact reform, AT&T has promised to invest more than \$600 million and create 2,000 new jobs during a three-year period.

There is no question this type of legislation will remove the superfluous barriers to entry that have hindered competition in the cable wireline market as well as limit government's role by eliminating local bureaucracy. But, most importantly, it will allow more choice, bring more innovation, and lower prices to consumers, and by doing so, turn a dream into a reality.

Matthew Hussey is the Telecom & IT Task Force Director for the American Legislative Exchange Council.

ALEC Policy Corner

Continued from page 10

point because silica exposure and asbestos exposure leave pleural markings on the lungs in opposite locations, and because 99 percent of the plaintiffs had all been diagnosed by the same small group of nine doctors, one of whom admitted to not actually knowing the criteria for diagnosing the disease. In addition, nearly all of the cases were the result of mass screenings in commercial lots, paid for by the attorneys, and sometimes without a medical professional present.

Asbestos and silica litigation is clogging state court systems and causing defendant bankruptcies. To date, 85 companies have been bankrupted because of their asbestos liability. Without reform, companies will continue to file for bankruptcy and the well of dollars that are owed to the truly sick could become threatened.

The Asbestos and Silica Claims Priorities Act, which has already been enacted in Ohio, Georgia, Texas, Florida, Kansas, South Carolina, and Tennessee, can fix the problem. The act requires claimants to show credible and objective evidence of impairment in order to

proceed with their claims. For those unable to produce such evidence, their claims will not be subject to the normal statutes of limitations, and they will be free to continue with their cases if or when they show signs of impairment. Defense litigation firms in states that have enacted similar legislation have noted a drop of new case filings of nearly 90 percent. This significant drop means the individuals suffering from illnesses such as mesothelioma, an extremely debilitating form of cancer, are receiving the priority they deserve in the legal system.

If enacted, Missouri's HB 512 will offer a balanced and fair approach to managing some of the most unfair aspects of asbestos and silica litigation. If you are interested in more information about this or any of ALEC's civil justice reform model bills, please contact Civil Justice Task Force Director Kristin Armshaw at (202) 742-8532.

School Choice: Victory in Utah

Continued from page 2

had a better chance at finding the right environment and approach for their child. Utah's new, universal program ensures more and more parents will likewise be given the opportunity to enroll their children in the schools of their choice. Utah's state constitution does not bar this kind of program. In addition, Utah lawmakers agreed to let public schools keep, for five years, a portion of the funds associated with students that elect to transfer to private schools with a scholarship. That measure has the effect of actually increasing per-pupil funding as public schools receive funds for students enrolled in other schools.

Utah parents are not the only ones with cause to celebrate. Parents of students with disabilities in Georgia are closer than ever to having more choice in education. Georgia's Senate approved the Georgia Special Needs Scholarship Program based on the successful examples of similar programs in other states including Utah's Carson Smith Special Needs Scholarship Program and Florida's McKay Scholarships Program. The Florida program has been in operation since 1999

and currently provides scholarships to roughly 16,000 students with disabilities. More impressively, parents of students using McKay scholarships report a 93 percent satisfaction rate with their McKay schools compared with a 33 percent satisfaction with their public schools.



Similar bills are gaining traction in other states making 2007 one of the most promising years for school choice. According to estimates from the Heritage Foundation, by the end of this year approximately 150,000 children across the United States will attend an elementary or secondary private school using a publicly funded tuition scholarship. As more parents experience the power of choice and more students achieve their true potential under choice programs, opposition surrounding school choice will be seen for what it is: misguided and antithetical to a free society.

Matt Warner is the Director of the Education Task Force at ALEC.

AMERICAN LEGISLATIVE EXCHANGE COUNCIL
ALEC

1129 20th Street, N.W., Suite 500
Washington, D.C. 20036

PRST FIRST CLASS
US POSTAGE
PAID
SUBURBAN MD
PERMIT No. 2295